

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 14490 of 2004

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA

HONOURABLE MR.JUSTICE MD SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
 - 2 To be referred to the Reporter or not?
 - 3 Whether their Lordships wish to see the fair copy of the judgment?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?
 - 5 Whether it is to be circulated to the civil judge?

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RAYMON PATEL GELATINE PVT.LTD. - Petitioner
Versus
KHEDA JILLA FACTORY KAMDAR UNION - Respondent

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Appearance :

MR ND NANAVATI, SR. ADVOCATE WITH MITUL K SHELAT for Petitioner
MR PC MASTER for Respondent

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 18/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

The petitioner - Raymon Patel Gelatine Private Limited, has challenged in this petition the impugned award dated 08.09.2004 (Annexure - A) passed by the Industrial Tribunal, Nadiad in Reference (ITN) No. 782 of 1998.

At the outset, we may state that Mr.N.D.Nanavati, learned Senior Advocate appearing with Mr.Mitul Shelat, learned Advocate for the petitioner has restricted his challenge only to the part of the award passed by the learned Industrial Tribunal on the point of Dearness Allowance awarded by it at the rate of 4.5 paise to the workers. Therefore, we are not required to consider other part of the award passed by the learned Tribunal in this petition.

Mr.Nanavati, learned Senior Advocate submitted that while passing the award and raising Dearness Allowance from 4 paise to 4.5 paise in favour of the workmen, the learned Tribunal was required to consider three things; (i) whether petitioner - Company was profit making Company or not? (ii) whether they were having surplus funds or not? and (iii) region wise other companies are paying more to their workers or not?.

He submitted that without taking into

consideration all these facts, the learned Tribunal has awarded dearness allowance at the rate of 4.5 paise only because the petitioner - Company had done charity. He also submitted that learned Tribunal has committed error in drawing inference against the petitioner - Company for not producing its balance sheet. Lastly, he submitted that in any case, the learned Tribunal could not have given dearness allowance with retrospective effect, it can be at the most from the date of award.

Whether the petitioner - Company was profit making or not? This question could have been well decided by the learned Tribunal provided the petitioner had produced its balance-sheet. For the reasons best known to it, the petitioner - Company had not produced the same before the learned Tribunal though repeatedly asked for. In absence of the balance - sheet produced by the petitioner - company, it would be difficult to notice surplus funds of the petitioner. Thus, no fault can be found with the award of the learned Tribunal while awarding 4.5 paise without considering the fact that the petitioner is profit making Company or not or having surplus funds or not. The third thing i.e. regarding region wise, it has come on record that in the entire region of Gujarat, except the petitioner no other company was there. Therefore, there is no question of comparable instance of other companies. The petitioner seems to be having monopoly in the region. It is no doubt true that the learned Tribunal took

into consideration the charity made by the petitioner and came to the conclusion that if it can do charity to others, then it has to pay to its own workers who are with it since number of years.

This brings us to the last contention of Mr.Nanvati, that in any case, the learned Tribunal ought not to have given retrospective effect in its order. However, Mr.Master, learned advocate for the respondent submitted that discretion lie with the learned Tribunal to award dearness allowances either from the date of the reference, from the date of the demand or from the date of the award. He submitted that on the facts of this case, when the Tribunal thought it fit to award only 4.5 paise instead of demand of 5 paise and gave retrospective effect, then this Court in its limited jurisdiction under Article 227 of the Constitution of India should not interfere. It is no doubt true that if the effect is to be given from 01.07.1998 then, it would come to Rs.24,77,000.60 paise (Rupees Twenty Four Lacs Seventy seven Thousand and Sixty paise only). However, considering the facts learned Tribunal thought it fit to award 4.5 paise instead of demand of 5 paise, therefore, we would not like to interfere with such discretionary powers of the learned Tribunal in granting retrospective effect to its order while enhancing dearness allowance of the workers.

Before parting, we must state that this

petition is labelled under Articles 226 and 227 of the Constitution of India, but strictly speaking it is a petition under Article 227 of the Constitution of India, the scope of which is narrow and limited as held by the Hon'ble Supreme Court in number of decisions that the High Court should not interfere with the orders of the Tribunal in its limited jurisdiction under Article 227 of the Constitution of India when no jurisdictional error is committed. The Hon'ble Supreme Court has held in the case of **Mohd. Yunus v/s. Mohd. Mustaqim reported in AIR 1984 SC 38**, that this Court cannot interfere with the order of the Tribunal even if there is error on the facts or on law committed by the Tribunal. In the instant case, there is no error on the facts or on the law much less jurisdictional error committed by the Tribunal while passing the impugned order.

In view of above, we do not see any reason to interfere with the impugned award in the petition. In view of above discussion, this petition fails and is hereby dismissed. Rule is discharged. No order as to costs. Interim arrangement / order stands vacated forthwith.

[B.J.SHETHNA, J.]

[M.D.SHAH, J.]

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